

EXHIBIT 1

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 11 Veronica Lowery

E-FILED
 12/4/2017 2:57 PM
 Clerk of Court
 Superior Court of CA,
 County of Santa Clara
 17CV320000
 Reviewed By: R. Walker

8 **SUPERIOR COURT OF CALIFORNIA**
 9 **COUNTY OF SANTA CLARA**

10 VERONICA LOWERY, individually) **CASE NO.: 17CV320000**
 11 and on behalf of all others similarly)
 12 situated,) **CLASS ACTION**
 13 Plaintiffs,) **CLASS ACTION COMPLAINT FOR**
 14 vs.) **DAMAGES**
 15 FRESENIUS MEDICAL CARE OF) **JURY DEMAND**
 16 NORTH AMERICA, BIO-MEDICAL) **Amount to Exceed \$25,000**
 17 APPLICATIONS OF CALIFORNIA,)
 18 INC., BIO-MEDICAL APPLICATIONS)
 19 OF LOS GATOS, INC., and DOES 1 to)
 20 10, inclusive,)
 21 Defendants.)
 22

- 1. Failure to provide accurate wage statements
- 2. Failure to provide notice of sick leave policy

21 Plaintiff Veronica Lowery (hereinafter "Plaintiff"), hereby submits this Class Action
 22 Complaint against Defendant FRESENIUS MEDICAL CARE of NORTH America, Bio-
 23 Medical Applications of California, Inc., and Bio-Medical Applications of Los Gatos, Inc.
 24 and other as yet unknown entities (hereinafter collectively referred to as "Defendants") on
 25 behalf of himself and a class of all other similarly situated current and former employees of
 26 Defendants for penalties or damages for failure to keep accurate records, other penalties
 27 under the California Labor Code, and for restitution and injunctive relief as follows:
 28

INTRODUCTION

2 1. Plaintiff brings this wage and hour Class Action against Defendants, and each
3 of them, pursuant to Code of Civil Procedure §382. Plaintiff brings this action on behalf of
4 himself and for the benefit of all other persons employed directly by Defendants, and each of
5 them, in the position of Non-Exempt employee, including but not limited to "Non-Exempt
6 Hourly Worker" covered by Wage Order 5 and/or 7 who were not provided with accurate
7 Wage Statements pursuant to California law prior and subsequent to the date this action was
8 filed. All allegations in this wage and hour Class Action Complaint are based upon
9 information and belief, except for those allegations which pertain to the Plaintiff named
10 herein and their counsel. Plaintiff's information and beliefs are based upon, *inter alia*, the
11 investigation conducted to date by Plaintiff and his counsel. Each allegation in this wage and
12 hour Class Action Complaint either has evidentiary support or is likely to have evidentiary
13 support after a reasonable opportunity for further investigation and discovery.

14 2. On information and belief, for at least four years prior to the filing of this action
15 and through to the present, Defendants jointly employed Plaintiff and the putative class
16 members in Santa Clara County, and other counties in the State of California, and maintained
17 and enforced against Plaintiff and the putative class members the systemic policies, practices,
18 and/or customs complained of herein. Plaintiff seeks relief on behalf of himself, and the
19 members of the Plaintiff Class, as a result of systemic employment policies, practices and
20 procedures, more specifically described below, which violate the California Labor Code, and
21 the orders and standards promulgated by the California Department of Industrial Relations,
22 Industrial Welfare Commission, and Division of Labor Standards Enforcement, and which
23 have resulted in the failure of Defendants to provide Plaintiff and members of the Class and
24 Subclass accurate wage statements. Said employment policies, practices and procedures are
25 generally described as follows:

26 a. Defendants failed to provide to their non-exempt employees,
27 including Plaintiff and the class members a written notice, containing the
28 language required by Labor Code §2810.5

1 b. Defendants failed to issue accurate itemized wage statements to their non-
 2 exempt employees, including Plaintiff and the class members, in violation of,
 3 inter alia, Labor Code §226, §246, and Wage Order 5 and/or 7;

4 3. Plaintiff also alleges that Defendants, and each of them, had the clear ability to
 5 provide accurate wage statements to the Plaintiff and members of the Class, but intentionally
 6 failed to do so, in conscious disregard of the rights of Plaintiff and the members of the Class
 7 to timely payment of their wages.

8 4. This action seeks relief for the un-remediated violations of California law
 9 including, inter alia:

10 a. Damages and/or penalties for Plaintiff and Class Members who were not issued
 11 accurate itemized wage statements in conformity with California law.

12 b. Implementation of other equitable and injunctive relief, including, inter alia, an
 13 injunction prohibiting Defendants, and each of them, from continuing to:

14 i. fail to issue accurate itemized wage statements in accordance with the
 15 Labor Code and Wage Order 5 and/or 7; and,
 16 ii. fail to provide to their non-exempt employees written notice, containing
 17 the language required by Labor Code §2810.5

18 c. Attorney fees and costs as provided by statute and/or applicable case law
 19 including, without limitation, Labor Code §§ 226 and 1194, and Code of Civil
 20 Procedure § 1021.5; and such other relief as the Court deems just and proper.

21 5. The claims herein are brought by Plaintiff on his own behalf and on behalf of
 22 the Class which is defined as individuals who are currently or have been employed in
 23 California by defendants as non-exempt employees during the Class Period (which
 24 commences four years prior to the filing of this action and continues until judgment is
 25 rendered herein), and whose working conditions are not controlled by a collective bargaining
 26 agreement.

27 6. "Class Period" shall mean the period from four years prior to the date this
 28 Complaint was filed, through and including the date judgment is rendered in this matter.

1 Plaintiff herein reserves the right to amend this Complaint to reflect a different Class Period
 2 as discovery in this matter proceeds.

3 **JURISDICTION AND VENUE**

4 7. This Court has jurisdiction over Plaintiff and Class members' claims for failure
 5 to provide accurate wage statements, including, but not limited to, sections 226, 246, 246.5,
 6 248.5, and 2810.5 and the IWC wage orders.

7 8. This Court also has jurisdiction over Plaintiff and Class members' claims for
 8 penalties in violation of the Labor Code pursuant to UCL section 17202, as well as pursuant
 9 to the applicable Labor Code provisions.

10 9. Venue as to all Defendants is proper in this County pursuant to Code of Civil
 11 Procedure section 395(a). Plaintiff is informed and believes, and thereon alleges that
 12 Defendants conducts business, employs Class members, and has locations in this County, and
 13 the events complained of occurred in this County.

14 **THE PARTIES**

15 10. Plaintiff Veronica Lowery has been employed by Defendants as a Non-Exempt
 16 Hourly Worker during the Class Period, including within the last year. Plaintiff is a resident
 17 of the County of Sacramento, California. Plaintiff is a member of the Class.

18 11. Plaintiff is informed and believes and thereon alleges that at all times relevant
 19 to this litigation, Defendants FRESENIUS MEDICAL CARE of NORTH America, Bio-
 20 Medical Applications of California, Inc., and Bio-Medical Applications of Los Gatos, Inc.
 21 were and/or are corporations, organized and existing pursuant to the laws of the state of
 22 California, which conducted and/or conducts its business in the State of California.
 23 Defendants were at all relevant times doing business throughout the State of California, have
 24 various offices and locations in the State, and serve numerous customers throughout the State.

25 12. Defendants is a "person" as defined in Labor Code section 18. Defendants is
 26 also an "employer" as that term is used in the Labor Code and the IWC wage orders.

27 13. The identities of Defendants designated as DOES 1-10 are currently not known.
 28 However, Plaintiff is informed, and believes, and thereon alleges that each of the named and

1 fictitiously named defendants is an “employer” of Plaintiff and the Class by legal recognition
2 under such principles as “joint enterprise”, “alter ego”, “co-employer” or some other legally
3 recognized principle. Each of the defendants, whether specifically named and fictitiously
4 named, exercises sufficient control over the terms of employment to be legally recognized as
5 an “employer” of Plaintiff and the Class for purposes of California’s wage and hour laws and
6 regulations.

7 14. The members of the Class, including the named, representative Plaintiff, have
8 been employed as non-exempt employees during the Class Period in California. The
9 practices and policies which are complained of by way of this Complaint are enforced by
10 Defendants throughout the State of California.

11 15. Defendants directly, and indirectly, hired Plaintiff in Santa Clara County.
12 During all times relevant to this litigation, Plaintiff performed work at various times during
13 the Class Period at agreed upon hourly rates that varied over his period of employment.

FACTUAL ALLEGATIONS

15 16. Defendants' policies, procedures and practices is to deny Plaintiff and members
16 of the putative class notice that an employee: may accrue and use sick leave; has a right to
17 request and use accrued paid sick leave; may not be terminated or retaliated against for using
18 or requesting the use of accrued paid sick leave and has the right to file a complaint against an
19 employer who retaliates.

20 17. Defendants further fail to provide members of the Class with written notice that sets
21 forth the amount of paid sick leave available, or paid time off leave an employer provides in
22 lieu of sick leave which they are entitled in their itemized wage statements.

18. Defendants' unlawful conduct has been widespread, repeated and willful throughout its facilities in California. Defendants knew or should have known that its policies and practices have been unlawful and unfair.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action as a class action pursuant to California Code of Civil
Procedure ("CCP") section 382, on behalf of the following defined Class and Subclass:

1 All individuals who are currently or have been employed in
 2 California by defendants as non-exempt employees during the
 3 Class Period, and whose working conditions are not controlled by
 4 a collective bargaining agreement.

5 20. As used throughout this Complaint, the term "Class Period" shall mean the
 6 period from four years prior to the date this Complaint was filed, through and including the
 7 date judgment is rendered in this matter.

8 21. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that
 9 during the Class Period, there have been over one hundred Class members. As a result, the
 10 members of the Class are so numerous that joinder of all members is impossible and/or
 11 impracticable.

12 22. Commonality: Common questions of law and fact exist as to all members of the
 13 Class and predominate over any questions affecting solely individual members of the Class.
 14 Among the questions of law and fact, that are relevant to the adjudication of Class members'
 15 claims are the following:

- 16 a. Whether Defendants' failed to provide Plaintiff and members of the
 17 Class with accurate wage statements in violation of Labor Code section
 18 226, and applicable Industrial Welfare Commission Orders, and
 19 applicable State Regulations;
- 20 b. Whether Plaintiff and the class members received written notice,
 21 containing the language required by Labor Code §2810.5; and,
- 22 c. Whether Plaintiff and members of the Class sustained damages, and if
 23 so, the proper measure of such damages, as well as interest, penalties,
 24 costs, attorneys' fees, and equitable relief.

25 23. Typicality: Plaintiff's claims are typical of the members of the Class. Plaintiff,
 26 like other members of the Class, was subjected to Defendants' policies and/or practices set
 27 forth above.

28

1 24. Adequacy of Representation: Plaintiff will fairly and adequately protect the
 2 interests of the members of the Class and has retained counsel competent and experienced in
 3 both class action and employment litigation.

4 25. Superiority: Questions of law or fact common to Class members predominate
 5 over any questions solely affecting individual Class members and class action is superior to
 6 other available methods for the fair and efficient adjudication of this controversy. Class
 7 action treatment will allow a large number of similarly situated Class members to
 8 simultaneously and efficiently prosecute their common claims in a single forum without the
 9 needless duplication of effort and expense that numerous individual actions would entail. In
 10 addition, a class action will serve the important public interest of permitting Class members
 11 harmed by Defendants' unlawful policies and/or practices to effectively pursue recovery of
 12 the sums owed to them.

13 26. Plaintiff knows of no difficulty which will be encountered in the management
 14 of this litigation which would preclude its maintenance as a class action.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
 17 (Labor Code §§226.(a), 246, 248.5, and Wage Order 5 and/or 7)
 18 *Plaintiff Individually and on Behalf of the Class Against Defendants*

19 27. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

20 28. In 2014, the California Legislature enacted the Healthy Workplaces, Healthy
 21 Families Act. Section 246(h)2 reads as follows, in relevant part:

22 An employer shall provide an employee with written notice that sets forth
 23 the amount of paid sick leave available, or paid time off leave an employer
 24 provides in lieu of sick leave, for use on either the employee's itemized
 25 wage statement described in Section 226 or in a separate writing provided
 26 on the designated pay date with the employee's payment of wages. If an
 27 employer provides unlimited paid sick leave or unlimited paid time off to
 28 an employee, the employer may satisfy this section by indicating on the
 notice or the employee's itemized wage statement "unlimited."

27 29. DEFENDANTS has knowingly and intentionally failed to provide Plaintiff and other
 28 members of the Class with accurate written wage statements. By not maintaining accurate

1 records of the paid sick leave accrued for employees, DEFENDANTS has failed to provide
2 Plaintiff and members of the Class with written wage statements that accurately reflect,
3 among other things, her amount of accrued paid sick leave. Plaintiff is also informed and
4 believes and thereon alleges that DEFENDANTS has done the same with respect to the wage
5 statements they have provided to thousands of other aggrieved employees. Consequently,
6 DEFENDANTS has violated the rights of Plaintiff and other aggrieved employees under
7 Labor Code §§ 226(a), 246 and 248.5.

8 30. Pursuant to *Labor Code* §§ 226(e) and (h), Plaintiff and each class member are
9 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
10 period in which a violation occurs and one hundred dollars (\$100) per employee for each
11 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
12 dollars (\$4,000). Plaintiff and each class member are further entitled to an award of costs and
13 reasonable attorney's fees.

31. Defendants failed to accurately record the wages due to Plaintiff and members of the proposed class, specifically including, but not limited to, by failing to record premium wages for Defendants' failure to provide proper rest breaks.

17 32. Plaintiff and members of the Plaintiff Class request recovery of *Labor Code* §
18 226(e) penalties according to proof, as well as interest, attorney's fees and costs pursuant to
19 *Labor Code* § 226(e), and all other damages, attorneys' fees, costs, expenses and interest
20 permitted by statute.

SECOND CAUSE OF ACTION

**FAILURE TO PROVIDE NOTICE OF SICK LEAVE
(CALIFORNIA LABOR CODE § 2810.5)**

Plaintiff Individually and on Behalf of the Class Against Defendants

24 33. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

34. Labor Code Section 2810.5 states in relevant part:

26 (a)(1) At the time of hiring, an employer shall provide to each employee a
27 written notice, in the language the employer normally uses to communicate

1 employment-related information to the employee, containing the following
 2 information:

3 ...

4 (H) That an employee: may accrue and use sick leave; has a right to request and
 5 use accrued paid sick leave; may not be terminated or retaliated against for
 6 using or requesting the use of accrued paid sick leave; and has the right to file a
 7 complaint against an employer who retaliates.

8 35. DEFENDANTS has knowingly and intentionally failed to provide Plaintiff and
 9 Class Members with the required written notice of any paid sick leave policy, as required
 10 under Labor Code § 2810.5. Consequently, DEFENDANTS has violated the rights of
 11 Plaintiff and other aggrieved employees under Labor Code § 2810.5.

12 36. Plaintiff and members of the Plaintiff Class request recovery of *Labor Code* §
 13 226(e) penalties according to proof, as well as interest, attorney's fees and costs pursuant to
 14 *Labor Code* §§ 226.3 and 558, and all other damages, attorneys' fees, costs, expenses and
 15 interest permitted by statute.

16 **ATTORNEY'S FEES AND COSTS**

17 37. Plaintiff is entitled to fees and costs, pursuant to California law, including,
 18 without limitation, *Code of Civil Procedure* § 1021.5 and *Labor Code* §§ 226 and 1194.
 19 Further, enforcement of statutory provisions enacted to protect workers and to ensure prompt
 20 payment of wages due employees is a fundamental public interest in California.
 21 Consequently, Plaintiff's success in this action will result in the enforcement of important
 22 rights affecting the public interest and will confer a significant benefit upon the public.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff and members of the Class pray for judgment as follows:

25 a) An order that the action be certified as a class action;
 26 b) An order that Plaintiff be appointed class representatives;
 27 c) An order that counsel for Plaintiff be appointed class counsel;
 28 d) For nominal damages;

- e) For compensatory damages;
- f) For restitution of all monies due to Plaintiff and members of the Class, and disgorged profits from the unlawful business practice of Defendants;
- g) For penalties pursuant to Labor Code 226, 226.3, 246, 246.5, 248.5, 558, 2810.5, and 2699(f)(2);
- h) For interest accrued to date;
- i) For costs of suit and expenses pursuant to Labor Code §§ 226 and 1194;
- j) For reasonable attorneys' fees pursuant to Labor Code §§ 226, and 1194; and,
- k) For all such other and further relief that the Court may deem just and proper.

10 | //

DEMAND FOR JURY TRIAL

12 Plaintiff, on behalf of himself and all others similarly situated, demand a trial by jury
13 for himself and all Class members on all claims so triable.

13 || Dated: November 27, 2017

By

Law Offices of Todd M. Friedman, P.C.
Todd M. Friedman, Esq.
Adrian R. Bacon, Esq.
Attorneys for Plaintiffs and the
Proposed Class

12-5-17 @ 135

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

**FRESENIUS MEDICAL CARE OF NORTH AMERICA,
BIO-MEDICAL APPLICATIONS OF CALIFORNIA, INC.,**

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

**VERONICA LOWERY, individually and on behalf of all others
similarly situated**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

E-FILED

12/4/2017 2:57 PM

Clerk of Court

Superior Court of CA,
County of Santa Clara
17CV320000

Reviewed By: R. Walker

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Downtown Superior Court

191 North First Street
San Jose, CA 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Todd M. Friedman, 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367, 877-206-4741

17CV320000

DATE: **12/4/2017 2:57 PM** Clerk of Court Clerk, by _____ Deputy (Adjunto) _____

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **Bio-Medical Applications of California, Inc.**

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):

12-5-17

SUM-200(A)

SHORT TITLE: Lowery v. Fresenius Medical Care of North America, et al.	CASE NUMBER: 17CV320000
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

BIO-MEDICAL APPLICATIONS OF LOS GATOS, INC., and DOES 1 to 10, inclusive

Page _____ of _____

Page 1 of 1

12-5-17 (a) 135

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

FRESENIUS MEDICAL CARE OF NORTH AMERICA,
BIO-MEDICAL APPLICATIONS OF CALIFORNIA, INC.,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

VERONICA LOWERY, individually and on behalf of all others
similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

E-FILED
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Reviewed By: R. Walker

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The name and address of the court is:
(El nombre y dirección de la corte es): Downtown Superior Court

191 North First Street
San Jose, CA 95113

Case Number:
Número del Caso:
17CV320000

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Todd M. Friedman, 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367, 877-206-4741

DATE: **12/4/2017 2:57 PM** Clerk of Court **R. Walker** Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

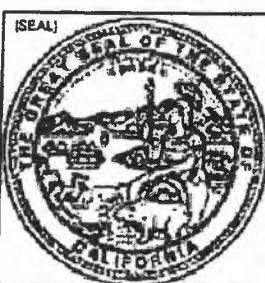
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2. as the person sued under the fictitious name of (specify):

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 other (specify):

4. by personal delivery on (date): **12-5-17**



SUM-200(A)

SHORT TITLE: Lowery v. Fresenius Medical Care of North America, et al.	CASE NUMBER: 17CV320000
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

BIO-MEDICAL APPLICATIONS OF LOS GATOS, INC., and DOES 1 to 10, inclusive

Page _____ of _____
Page 1 of 1

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Todd M. Friedman, Esq. SBN 216752 Law Offices of Todd M. Friedman 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367 TELEPHONE NO.: 877-206-4741 FAX NO.: 866-633-0228 ATTORNEY FOR (Name): Plaintiff, VERONICA LOWERY		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Downtown Superior Court		E-FILED 12/4/2017 2:57 PM Clerk of Court Superior Court of CA, County of Santa Clara 17CV320000 Reviewed By: R. Walker
CASE NAME: VERONICA LOWERY v. FRESENIUS MEDICAL CARE OF NORTH		DATE NUMBER 17CV320000
CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
JUDGE: DEPT.		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:																																																									
<table border="0"> <tr> <td>Auto Tort</td> <td>Contract</td> <td>Provisionally Complex Civil Litigation</td> </tr> <tr> <td><input type="checkbox"/> Auto (22)</td> <td><input type="checkbox"/> Breach of contract/warranty (06)</td> <td>(Cal. Rules of Court, rules 3.400-3.403)</td> </tr> <tr> <td><input type="checkbox"/> Uninsured motorist (46)</td> <td><input type="checkbox"/> Rule 3.740 collections (09)</td> <td><input type="checkbox"/> Antitrust/Trade regulation (03)</td> </tr> <tr> <td>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</td> <td><input type="checkbox"/> Other collections (09)</td> <td><input type="checkbox"/> Construction defect (10)</td> </tr> <tr> <td><input type="checkbox"/> Asbestos (04)</td> <td><input type="checkbox"/> Insurance coverage (18)</td> <td><input type="checkbox"/> Mass tort (40)</td> </tr> <tr> <td><input type="checkbox"/> Product liability (24)</td> <td><input type="checkbox"/> Other contract (37)</td> <td><input type="checkbox"/> Securities litigation (28)</td> </tr> <tr> <td><input type="checkbox"/> Medical malpractice (45)</td> <td><input type="checkbox"/> Real Property</td> <td><input type="checkbox"/> Environmental/Toxic tort (30)</td> </tr> <tr> <td><input type="checkbox"/> Other PI/PD/WD (23)</td> <td><input type="checkbox"/> Eminent domain/inverse condemnation (14)</td> <td><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</td> </tr> <tr> <td>Non-PI/PD/WD (Other) Tort</td> <td><input type="checkbox"/> Wrongful eviction (33)</td> <td><input type="checkbox"/> Enforcement of Judgment</td> </tr> <tr> <td><input type="checkbox"/> Business tort/unfair business practice (07)</td> <td><input type="checkbox"/> Other real property (26)</td> <td><input type="checkbox"/> Enforcement of judgment (20)</td> </tr> <tr> <td><input type="checkbox"/> Civil rights (08)</td> <td><input type="checkbox"/> Unlawful Detainer</td> <td>Miscellaneous Civil Complaint</td> </tr> <tr> <td><input type="checkbox"/> Defamation (13)</td> <td><input type="checkbox"/> Commercial (31)</td> <td><input type="checkbox"/> RICO (27)</td> </tr> <tr> <td><input type="checkbox"/> Fraud (16)</td> <td><input type="checkbox"/> Residential (32)</td> <td><input type="checkbox"/> Other complaint (not specified above) (42)</td> </tr> <tr> <td><input type="checkbox"/> Intellectual property (19)</td> <td><input type="checkbox"/> Drugs (38)</td> <td>Miscellaneous Civil Petition</td> </tr> <tr> <td><input type="checkbox"/> Professional negligence (25)</td> <td><input type="checkbox"/> Judicial Review</td> <td><input type="checkbox"/> Partnership and corporate governance (21)</td> </tr> <tr> <td><input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35)</td> <td><input type="checkbox"/> Asset forfeiture (05)</td> <td><input type="checkbox"/> Other petition (not specified above) (43)</td> </tr> <tr> <td>Employment</td> <td><input type="checkbox"/> Petition re: arbitration award (11)</td> <td><input type="checkbox"/> Other judicial review (39)</td> </tr> <tr> <td><input type="checkbox"/> Wrongful termination (36)</td> <td><input type="checkbox"/> Writ of mandate (02)</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Other employment (15)</td> <td><input type="checkbox"/> Other</td> <td></td> </tr> </table>	Auto Tort	Contract	Provisionally Complex Civil Litigation	<input type="checkbox"/> Auto (22)	<input type="checkbox"/> Breach of contract/warranty (06)	(Cal. 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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 2

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 27, 2017

Todd M. Friedman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In Item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties In Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties In Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence) Negligent Breach of Contract/Warranty	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case	Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (non-domestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case
Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death	Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage	Miscellaneous Civil Complaint RICO (27) Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (non-harassment) Mechanics Lien Other Commercial Complaint Case (non-tort/non-complex)
Product Liability (not asbestos or toxic/environmental) (24)	Other Contract (37) Contractual Fraud Other Contract Dispute	
Medical Malpractice (45)	Real Property	
Medical Malpractice—Physicians & Surgeons	Eminent Domain/Inverse Condemnation (14)	
Other Professional Health Care Malpractice	Wrongful Eviction (33)	
Other PI/PD/WD (23)	Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title	
Premises Liability (e.g., slip and fall)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Unlawful Detainer	
Intentional Infliction of Emotional Distress	Commercial (31)	
Negligent Infliction of Emotional Distress	Residential (32)	
Other PI/PD/WD	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	
Non-PI/PD/WD (Other) Tort	Judicial Review	
Business Tort/Unfair Business Practice (07)	Asset Forfeiture (05)	
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Petition Re: Arbitration Award (11)	
Defamation (e.g., slander, libel) (13)	Writ of Mandate (02)	
Fraud (16)	Writ—Administrative Mandamus	
Intellectual Property (19)	Writ—Mandamus on Limited Court	
Professional Negligence (25)	Case Matter	
Legal Malpractice	Writ—Other Limited Court Case Review	
Other Professional Malpractice (not medical or legal)	Other Judicial Review (39)	
Other Non-PI/PD/WD Tort (35)	Review of Health Officer Order	
Employment	Notice of Appeal—Labor Commissioner Appeals	
Wrongful Termination (36)		
Other Employment (15)		

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. FIRST STREET
SAN JOSE, CA 95113-1090

E-FILED
12/7/2017 1:19 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
17CV320000
Reviewed By: R. Walker

TO: FILE COPY

RE: Lowery v. Fresenius Medical Care of North America, et al.
CASE NUMBER: 17CV320000

ORDER DEEMING CASE COMPLEX AND STAYING DISCOVERY

WHEREAS, the Complaint was filed by Plaintiff **VERONICA LOWERY** ("Plaintiff") in the Superior Court of California, County of Santa Clara, on December 4, 2017 and assigned to Department 5 (Complex Civil Litigation), the **Honorable Thomas E. Kuhnle** presiding, pending a ruling on the complexity issue;

IT IS HEREBY ORDERED that:

The Court determines that the above-referenced case is **COMPLEX** within the meaning of California Rules of Court 3.400. The matter remains assigned, for all purposes, including discovery and trial, to Department 5 (Complex Civil Litigation), the **Honorable Thomas E. Kuhnle** presiding.

The parties are directed to the Electronic Filing and Service Standing Order and to the Complex Civil Guidelines, copies of which may be downloaded from the Court's website.

Electronic service under this Order shall be construed by the Court and all parties to be equivalent to personal service. The two court days extension of time for electronic service under CCP § 1010.6(a)(4) does not apply. Any document for which service has not been completed by 5:00 p.m. is deemed served the following business day.

All parties are hereinafter ordered to submit to the Court's E-Filing website digital copies of all documents that were previously manually filed prior to the entry of this Order.

Pursuant to California Rules of Court, Rule 3.254, the creation and maintenance of the Master Service List shall be under the auspices of (1) Plaintiff **VERONICA LOWERY**, as the first-named party in the Complaint, and (2) the first-named party in each Cross-Complaint, if any.

Pursuant to Government Code section 70616(c), each party's complex case fee is due within ten (10) calendar days of this date.

Plaintiff shall serve a copy of this Order on all parties forthwith and file a proof of service within seven (7) days of service.

Any party objecting to the complex designation must file an objection and proof of service within ten (10) days of service of this Order. Any response to the objection must be filed within seven (7) days of service of the objection. The Court will make its ruling on the submitted pleadings.

The Case Management Conference remains set for March 23, 2018 at 10:00 a.m. In Department 5 and all counsel are ordered to attend in person.

Counsel for all parties are ordered to meet and confer in person at least 15 days prior to the First Case Management Conference and discuss the following issues:

1. Issues related to recusal or disqualification;
2. Issues of law that, if considered by the Court, may simplify or further resolution of the case, including issues regarding choice of law;
3. Appropriate alternative dispute resolution (ADR), for example, mediation, mandatory settlement conference, arbitration, mini-trial;
4. A plan for preservation of evidence and a uniform system for identification of documents throughout the course of this litigation;
5. A plan for document disclosure/production and additional discovery; which will generally be conducted under court supervision and by court order;
6. Whether it is advisable to address discovery in phases so that information needed to conduct meaningful ADR is obtained early in the case (counsel should consider whether they will stipulated to limited merits discovery in advance of certification proceedings), allowing the option to complete discovery if ADR efforts are unsuccessful;
7. Any issues involving the protection of evidence and confidentiality;
8. The handling of any potential publicity issues;

Counsel for Plaintiff is to take the lead in preparing a Joint Case Management Conference Statement to be filed 5 calendars days prior to the First Case Management Conference, and include the following:

1. A Statement as to whether additional parties are likely to be added and a proposed date by which all parties must be served;
2. Service lists identifying all primary and secondary counsel, firm names, addresses, telephone numbers, email addresses and fax numbers for all counsel;
3. A description of all discovery completed to date and any outstanding discovery as of the date of the conference;
4. Applicability and enforceability of arbitration clauses, if any;
5. A list of all related litigation pending in other courts, including Federal Court, and a brief description of any such litigation, and a statement as to whether any additional related litigation is anticipated (CRC 3.300);
6. A description of factual and legal issues – the parties should address any specific contract provisions the interpretation of which may assist in resolution of significant issues in the case;
7. The parties' tentative views on an ADR mechanism and how such mechanism might be integrated into the course of the litigation;
8. Whether discovery should be conducted in phases or limited; and if so, the order of phasing or types of limitations of discovery. If this is a class action lawsuit, the parties should address the issue of limited merits discovery in advance of class certification motions.

To the extent the parties are unable to agree on the matters to be addressed in the Joint Case Management Conference Statement, the positions of each party or of various parties should be set forth separately and attached to this report as addenda. The parties are encouraged to propose, either jointly or separately, any approaches to case management they believe will promote the fair and efficient handling of this case. The Court is particularly interested in identifying potentially dispositive or significant threshold issues the early resolution of which may assist in moving the case toward effective ADR and/or a final disposition.

If this is a class action lawsuit, a copy of the Court's Guidelines for Motions relating to Class Certification is attached to this Order. The Court may set a briefing schedule for Plaintiff's class certification motion at the time of the conference.

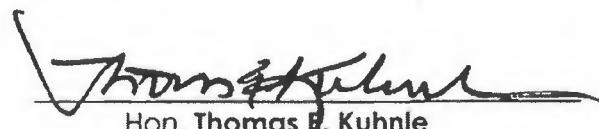
Pending further order of this Court, the service of discovery and the obligation to respond to any outstanding discovery is stayed. However, Defendant(s) shall file a Notice of Appearance for purposes of identification of counsel and preparation of a service list. The filing of such a Notice of Appearance shall be without prejudice to the later filing of a motion to quash to contest jurisdiction. Parties shall not file or serve responsive pleadings, including answers to the complaint, motions to strike, demurrers, motions for change of venue and cross-complaints until a date is set at the First Case Management Conference for such filings and hearings.

This Order is issued to assist the Court and the parties in the management of this "Complex" case through the development of an orderly schedule for briefing and hearings. This Order shall not preclude the parties from continuing to informally exchange documents that may assist in their initial evaluation of the issues presented in this Case.

Plaintiff shall serve a copy of this Order on all the parties in this matter forthwith.

SO ORDERED.

Date: 12.6.17



Hon. Thomas B. Kuhnle
Judge of the Superior Court

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line, (408) 882-2690 or the Voice/TDD California Relay Service, (800) 735-2922.

ATTACHMENT CV-5012

CIVIL LAWSUIT NOTICE

*Superior Court of California, County of Santa Clara
191 N. First St, San Jose, CA 95113*

CASE NUMBER: 17CV320000**READ THIS ENTIRE FORM**

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANTS (The person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, in the Clerk's Office of the Court, within 30 days of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>
- Rose Printing: 408-293-8177 or becky@rose-printing.com (there is a charge for forms)

For other local legal information, visit the Court's Self-Service website www.scsselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Hon. Thomas E. Kuhnle Department: 5

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 3/23/2018 Time: 10:00 am in Department 5

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.